

REMARKS

In the action of April 9, 2009, the examiner rejected claims 1 and 2 under 35 U.S.C. §103 as unpatentable over Kramer *et al* in view of Parker; rejected claims 1-3, 5-8, 10, 12, 13 and 20 under 35 U.S.C. §103 as unpatentable over Green in view of Hilscher *et al* and further in view of Parker; and rejected claims 4, 9, 11, 14-16 and 18-19 under 35 U.S.C. §103 as unpatentable over Green in view of Valiuius and further in view of Parker.

As indicated in the previous amendment, applicant and the examiner agree that the primary references (Kramer or Green) do not teach a hand-held personal appliance which is enabled for permanent subsequent use without expiration and without further compensation, following a one-time payment. The key reference relative to the above rejection is thus Parker, which allegedly provides the missing teaching. There are apparently two issues upon which applicant and the examiner disagree.

The first issue concerns the meaning of the term "limited time trial use" in applicant's claims. The term "trial use" as used in applicant's claims and the disclosure clearly refers to a test to assess the suitability or performance of the appliance by a user. Hence, it is inherently short-term and is for the purpose of making a decision relative to purchase. Parker's disclosure concerns wireless services provided by subscribers by a telecommunications provider. A handset is necessary for a subscriber to utilize the services. The subscriber can either themselves pay for the handset, or the purchase of the handset can be subsidized. This transaction cannot logically be referred to as a "trial use". It is not a test. A subscriber (the term used in Parker) contractually agrees to a period of use, typically one-three years, and pays for the use. The handset is enabled once a subscriber has signed a contract, agreeing to a monthly payment. This is a regular commercial use based on a contractual agreement, and this is not a trial use, in the ordinary meaning of that term. Applicant is concerned about the user making a decision on purchase after a short-term use. Parker is concerned about maintaining control over its subscribers which are contractually bound for an extended period of time for its communication services. Hence, there is no teaching in Parker which corresponds to the "limited time trial use" of applicant's invention. The term "trial use" is anomalous relative to Parker's

system.

Secondly, in applicant's system, a payment is made at the end of the trial period, at which point permanent use of the appliance is enabled, without further compensation, *i.e.* the actual purchase of the unit is made at the end of the trial period. Parker does not teach such a limitation. The handset in Parker is not purchased with a one-time payment at the end of the contractual period. The subscriber has been paying monthly usage fees for access to the communication system using the handset. At the end of the subscriber period, the device is permanently unlocked. There is no teaching of a one-time payment for purchase of the device at the end of the contractual period. The device is in fact purchased during the period of the subscriber's contract. This is hence the opposite of applicant's claimed system.

In paragraph 8 of the examiner's action, the examiner appears to discount that aspect of the applicant's claimed invention as "use limitations". However, the limitation at issue is not in fact a use limitation. It has nothing to do with use of the system by a user. The definition of "system" includes not just a set of parts *per se* but also a set of principles or procedures according to which the parts work. In this case, the limitation of providing the enabling device only after a payment is made at the end of the trial period is not a "use" of the system, but rather a principle or procedure forming an actual part of the system. Hence, the limitation should be given full effect and, as noted above, is not shown or taught by the reference.

In view of the above, independent claims 1, 14 and 20 are in condition for allowance. Since the remaining claims are dependent on the independent claims, those claims are also allowable.

Allowance of the application hence is respectfully requested.

Respectfully submitted,



Clark A. Puntigam
Registration No. 25,763

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